



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Delta Industrial Contractors, Inc.

File: B-226949

Date: June 4, 1987

DIGEST

Protest that agency improperly denied contract to low bidder on four base bid items of five-item construction solicitation is dismissed where record shows that the award was consistent with provision, incorporated by reference in the solicitation, which requires award to the lowest aggregate bidder, including additives and deductives, and protester is not low when additive item price is included.

DECISION

Delta Industrial Contractors, Inc. protests the proposed award of a contract to Mid South Construction Company under invitation for bids (IFB) No. F09650-87-B-0025, issued by Warner Robins Air Logistics Center, Robins Air Force Base, Georgia. The solicitation is for the conversion of a warehouse to a computer facility. Delta contends that it is entitled to the award because it submitted the low base bid.

The IFB, a total small business set-aside, contained five line items. The first four were identified as base bid items; the fifth was denominated as an additive item. In note (3) to the bid schedule, bidders were referred to the IFB clause, incorporated by reference, that concerned "additive or deductive items." The note also stated that item Nos. 0001 through 0004 would be considered the base bid for purposes of determining the low bid, and that if funds became available to award item No. 0005, it would "become a part of the contract."

Delta's main argument centers around the effect of note (3). In its protest letter, Delta points out that its bid for item Nos. 0001-0004 was \$315,850; Mid South's was \$324,242. When item No. 0005 was added, however, Delta's bid increased by \$10,000 to \$325,850, compared with an increase of \$1,500 and a total of \$325,742 for Mid South. The protester argues that the proposed award to Mid South directly contradicts note (3), since Delta's base bid was lower.

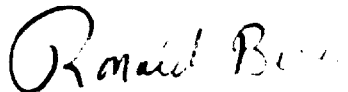
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The IFB provision referred to by note (3) provided that:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus . . . those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened." 48 C.F.R. § 252.236-7802 (1985).

Although the language of note (3) itself is not clear as to the basis for award if the additive item is included, the quoted clause does clearly state that the low bidder would be determined on the basis of any additive items awarded. Accordingly, when, before bid opening, the Air Force apparently became aware that sufficient funds would be available to award item No. 0005, it was required to base the award not on the amount of the base bid, but on the low aggregate bid. Since this is the approach taken by the Air Force, it is not subject to legal objection.

We dismiss the protest.



Ronald Berger
Deputy Associate
General Counsel